



**Los Angeles County  
Board of Supervisors**

**Gloria Molina**  
First District

**Mark Ridley-Thomas**  
Second District

**Zev Yaroslavsky**  
Third District

**Don Knabe**  
Fourth District

**Michael D. Antonovich**  
Fifth District

**Mitchell H. Katz, M.D.**  
Director

**Hal F. Yee, Jr., M.D., Ph.D.**  
Chief Medical Officer

**Christina Ghaly, M.D.**  
Deputy Director, Strategic Planning

313 N. Figueroa Street, Suite 912  
Los Angeles, CA 90012

Tel: (213)240-8101  
Fax: (213) 481-0503

[www.dhs.lacounty.gov](http://www.dhs.lacounty.gov)

*To ensure access to high-quality,  
patient-centered, cost-effective health  
care to Los Angeles County residents  
through direct services at DHS facilities  
and through collaboration with  
community and university partners.*



[www.dhs.lacounty.gov](http://www.dhs.lacounty.gov)

# ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

12 October 15, 2013

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

October 15, 2013

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF A SOLE SOURCE AGREEMENT WITH NETSCOUT  
SYSTEMS, INC.  
(ALL SUPERVISORIAL DISTRICTS)  
(3 VOTES)**

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION  
( )  
DISAPPROVE ( )**

## SUBJECT

Approval of a new Sole Source Agreement with NetScout Systems, Inc., for the provision of maintenance and support services for existing NetScout hardware and software installed to monitor enterprise network telecommunications and applications in the Department of Health Services.

## **IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the Director of Health Services (Director), or his designee, to execute a Sole Source Agreement with NetScout Systems, Inc., ("NetScout") to provide maintenance and support services for existing NetScout hardware and software effective upon execution by the parties for the period of November 13, 2013 through November 12, 2014, with a maximum obligation of \$160,894 per year with two 1-year renewals for a total Agreement term of three years from November 13, 2013 to November 12, 2016.
2. Delegate authority to the Director, or his designee, to execute amendments

as needed in order to: (1) add any relevant new or updated County Agreement terms; (2) delete equipment; (3) exercise an option to extend the term of the Agreement with two 1-year renewals for a total Agreement term of three years; and (4) increase the total maximum obligation for hardware and software maintenance and support services by no more than 10 percent of the maximum obligation.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The Department of Health Services (DHS) currently obtains maintenance and support services from NetScout under a Purchase Order (PO) issued by the Internal Services Department (ISD). ISD has advised DHS to seek Board approval for an Agreement for maintenance and support services for NetScout hardware and software products purchased under a PO because the cost of services sought by DHS exceeds ISD's PO authority.

Approval of the first recommendation will allow the Director, or his designee, to execute an Agreement substantially similar to Exhibit I, with NetScout to ensure continuation of the maintenance and support service from a previous PO. The initial Agreement term will be for the period November 13, 2013 through November 12, 2014 with two 1-year renewals from November 13, 2014 to November 12, 2016 for a total Agreement term of three (3) years from November 13, 2013 to November 12, 2016.

Approval of the second recommendation will enable the Director to amend the Agreement to: (1) add, delete, and/or change non-substantive terms and conditions in the Agreement; (2) delete equipment for hardware and software maintenance; (3) exercise an option to extend the term of the agreement for an additional two 1-year renewals from November 13, 2014 to November 12, 2016 for a total Agreement term of three years; and (4) allow the Director to increase the maximum obligation by no more than 10 percent for a maximum obligation of \$530,949 during the three year Agreement term.

### **Implementation of Strategic Plan Goals**

The recommended actions support Goal 1, Operational Effectiveness, of the County's Strategic Plan.

### **FISCAL IMPACT/FINANCING**

The total maximum obligation is \$160,894. The total potential increase under the 10 percent delegated authority is \$16,089 and would be funded using existing resources.

Funding is included in DHS' Fiscal Year 2013-14 Adopted Budget and will be requested in future fiscal years.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

NetScout monitors performance of servers, routers, switches, storage area networks, plus various enterprise devices, and applications. A functionality of NetScout is the predicative alarming of devices to avoid disruptions. Employing NetScout equipment and maintenance services will enable DHS to minimize down-time and provide a maximum of availability for patient critical data applications and network resources to support critical patient care data. Additionally, the future role

for NetScout monitoring, include other DHS facilities, videoconferencing, and Voice-Over-Internet-Protocol (VOIP) data-metric analysis reports to provide optimal videoconferencing and VOIP for the DHS enterprise.

Use of NetScout monitoring equipment began seven years ago at LAC+USC Medical Center to support computer networks and applications. In November 2009, DHS deployed NetScout to monitor performance of network architectures and enterprise applications at Health Services Administration, and all DHS Medical Center facilities.

The recommended Agreement includes all of the Board of Supervisors' required provisions, as well as County standard IT provisions applicable to Maintenance and Support Service. County Counsel has approved Exhibit I as to form. The Chief Information Officer (CIO) concurs with the Department's recommendation and the CIO Analysis is included as Attachment A.

The NetScout Agreement is not a Proposition A service Agreement. It is the acquisition of infrastructure maintenance and support, authorized by Government Code Section 31000.

## CONTRACTING PROCESS

NetScout's position as the Original Equipment Manufacturer (OEM) of NetScout hardware and software products, make it uniquely qualified to maintain and support its proprietary products. NetScout is the only company that can warranty the work of NetScout staff and technicians for the repair and maintenance of existing NetScout proprietary products already implemented at DHS facilities.

NetScout offers a unique service of performing predicative monitoring of network attached devices, and applications for possible disruptions. With predicative monitoring, DHS staff is able to maintain network and application availability without disruptions or delay of critical patient data services.

In accordance with Board Policy 5.100, on July 9, 2013, DHS provided the Board, with a copy to Chief Executive Officer for the required advanced notice of sole source agreement negotiation with NetScout.

Attachment B is the Sole Source Checklist in compliance with Board Policy 5.100.

## **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of the recommendations will ensure DHS can provide uninterrupted critical patient-care data, patient application services, medical recordkeeping, and DHS enterprise communication.

The Honorable Board of Supervisors

10/15/2013

Page 4

Respectfully submitted,

Handwritten signature of Mitchell H. Katz in black ink.

Mitchell H. Katz, M.D.

Director

Handwritten signature of Richard Sanchez in black ink, with the words "Reviewed By" written above it.

RICHARD SANCHEZ

Chief Information Officer

MHK:RS:rt

Enclosures

c: Chief Executive Office  
County Counsel  
Executive Office, Board of Supervisors  
Internal Services Department



RICHARD SANCHEZ  
CHIEF INFORMATION OFFICER

Office of the CIO  
**CIO Analysis**

NUMBER:

**CA 13-20**

DATE:

09/10/2013

SUBJECT:

**APPROVAL OF A SOLE SOURCE AGREEMENT WITH  
NETSCOUT SYSTEMS, INC.**

RECOMMENDATION:

☒ Approve☐ Approve with Modification☐ Disapprove

CONTRACT TYPE:

☒ New Agreement☒ Sole Source☐ Amendment to Agreement☐ Other: Describe contract type.

CONTRACT COMPONENTS:

☒ Software☒ Hardware☐ Telecommunications☐ Professional Services

SUMMARY:

Department Executive Sponsor: **Mitchell H. Katz, M.D., Director, Department of Health Services**

The proposed Agreement will:

1. Authorization to execute a Sole Source Agreement with NetScout Systems, Inc., ("NetScout") to provide maintenance and support services for existing NetScout hardware and software effective upon execution by the parties for the period of November 13, 2013 through November 12, 2014 with a maximum obligation of \$160,894 per year with two 1-year renewals for an Agreement term of three years from November 13, 2013 to November 12, 2016.
2. Delegate authority to execute amendments, as needed, in order to: add any relevant new or updated County Agreement terms; delete equipment; and increase the maximum obligation for hardware and software maintenance and support by no more than 10 percent of the maximum obligation during the period.

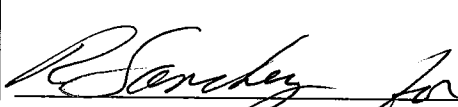

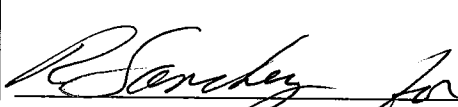

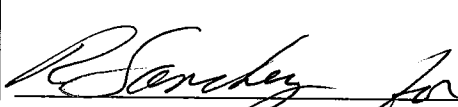

Agreement Amount: **\$530,949**

Funding Source: **DHS Fiscal Year (FY) 2013-14  
Adopted Budget**

☐ Legislative or Regulatory Mandate☐ Subvened/Grant Funded: Enter %

|  |   |
|--|---|
| <b>Strategic and Business Analysis</b> | <p>PROJECT GOALS AND OBJECTIVES:</p> <p>The project objective is to minimize any disruptions to patient care related applications and network resources to maintain and improve the support of the critical patient care business processes.</p>  |
|  | <p>BUSINESS DRIVERS:</p> <p>The main business driver is to improve patient care by effectively monitoring and intelligently predict network resource or application degradation with alarms to Department of Health Services (DHS') staff and technicians to mitigate risks of disruptions in critical patient data services. To accomplish improved patient data services, NetScout equipment monitors network traffic, user specified application data, and historical data to report bandwidth, and quality of service to promote optimal network usage.</p>   |
|  | <p>PROJECT ORGANIZATION:</p> <p>The project will be managed by DHS under the direction of Enrique Garcia, Associate Chief Information Systems, and Oscar Orozco, Information Technology Specialist I, Health Services Administration.</p>   |
|  | <p>PERFORMANCE METRICS:</p> <p>A lack of disruptions in network and application services for critical patient data is a major metric. NetScout maintenance and support services will be applied to existing implementations of NetScout equipment. Maintenance and Support Services will be applied to existing implementations of NetScout equipment located at all DHS Medical Centers, DHS' primary Data Center at Martin Luther King, Jr. Multi-Services Ambulatory Care Center (MLK MACC), a Comprehensive Health center, Ferguson back-up data center, and related Health resources that support patient data services.</p> <p>The NetScout InfiniStream with Performance Manager includes automated reporting tools that provide detailed service and network usage, anomalies, deviation in traffic patterns, clinical application data traffic, and server usage. Other highly used metrics are: application usage over time; top 10 Wide Area Network (WAN) applications; location response times; and link usage. These are all critical metrics that affect clinical applications and critical patient data throughout DHS.</p> |
|  | <p>STRATEGIC AND BUSINESS ALIGNMENT:</p> <p>NetScout aligns with DHS's goal to improve patient care. The project also supports the County's Strategic Plan, Goal 1 Operational Effectiveness.</p>   |

|                           |   |
|---------------------------|---|
|                           | <p>PROJECT APPROACH:</p> <p>The County will utilize NetScout’s Original Equipment Manufacturer (OEM) of NetScout products for equipment maintenance and support services. NetScout solutions started at LAC-USC Medical Center in the original phase and has expanded over the last seven years to all DHS Medical Centers, Multi-Service Ambulatory Care Centers, and DHS data centers. The future phases for NetScout monitoring include, other DHS facilities, videoconferencing, and Voice-Over-Internet-Protocol (VOIP) data-metric analysis reports to provide optimal videoconferencing and VOIP for the DHS enterprise.</p> <hr/> <p>ALTERNATIVES ANALYZED:</p> <p>As an OEM, NetScout is the only vendor that is capable of maintaining, supporting, or repairing NetScout equipment and products. Please see the Sole Source justification document.</p>  |
| <b>Technical Analysis</b> | <p>Analysis of proposed IT solution</p> <p>NetScout InfiniStream hardware and software is a secured Linux based solution attached to Local Area Network/Wide Area Network (LAN/WAN) interfaces to capture network packets for real time analysis, historical analysis, packet decodes, trends, and anomalies. Beside network resources, user-selected critical applications can be monitored and reported with use-specified metrics. Example of application metrics include, but not limited to bandwidth, data packet flows, and interface/port volumes. Examples of some applications commonly monitored, include QuadraMed/affinity, Pharmacy applications, Radiology applications, and fuji-pacs.</p> <p>NetScout offers DHS network predictive monitoring services. Predictive monitoring analyzes data-flows and work-flows of network devices and applications. By reporting and analyzing such information, NetScout equipment can identify irregularities and deficiencies in network resources. Once identified, NetScout equipment can predict network disruptions and send alarms to IT staff and technicians to avoid prospective disruptions of critical patient data.</p> <p>NetScout alarms have enabled DHS-IT staff to keep DHS networks and application resource down-times to a minimum and maximize availability of resources for critical patient care applications.</p> |



|  |  |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
|--|--|---|----------------|--|-----------|--|-----------------------------|--|-----------|---|------------------|-------------------------------|-----------|-------------------------------------|--------------------------------------|
| <b>Financial Analysis</b>  | <p>BUDGET:</p> <p>Ongoing (Maintenance and Support Service) costs:</p> <table> <tr> <td>Software.....</td><td>\$135,606</td></tr> <tr> <td>Hardware.....</td><td>\$ 25,288</td></tr> <tr> <td><b>Sub-total On Going Costs:.....</b></td><td><b>\$160,894 (Annually)</b></td></tr> <tr> <td>Optional Cost: (10 Percent)</td><td>\$ 16,089</td></tr> <tr> <td><b>Yearly Agreement Cost (maximum):</b></td><td><b>\$176,983</b></td></tr> <tr> <td>Two optional 1-year renewals:</td><td>\$353,966</td></tr> <tr> <td><b>Total Maximum Agreement sum:</b></td><td><b>\$530,949 (for a 3-year term)</b></td></tr> </table> | Software.....   | \$135,606      | Hardware.....                          | \$ 25,288 | <b>Sub-total On Going Costs:.....</b>  | <b>\$160,894 (Annually)</b> | Optional Cost: (10 Percent)                      | \$ 16,089 | <b>Yearly Agreement Cost (maximum):</b> | <b>\$176,983</b> | Two optional 1-year renewals: | \$353,966 | <b>Total Maximum Agreement sum:</b> | <b>\$530,949 (for a 3-year term)</b> |
| Software.....  | \$135,606  |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| Hardware.....  | \$ 25,288  |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| <b>Sub-total On Going Costs:.....</b>  | <b>\$160,894 (Annually)</b>  |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| Optional Cost: (10 Percent)  | \$ 16,089  |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| <b>Yearly Agreement Cost (maximum):</b>  | <b>\$176,983</b>   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| Two optional 1-year renewals:  | \$353,966  |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| <b>Total Maximum Agreement sum:</b>  | <b>\$530,949 (for a 3-year term)</b>   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| <b>Risk Analysis</b>   | <p>RISK MITIGATION:</p> <p>There are no significant risks in this project. This product has been in-place and performed for seven years and helps DHS with the necessary predictive monitoring to take effective precautions against degradation and disruptions.</p> <p>The Chief Information Security Officer (CISO) has reviewed this Agreement and did not identify any IT security or privacy related issues.</p>   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| <b>CIO Approval</b>  | <p>PREPARED BY:</p> <table> <tr> <td></td><td><u>10-3-13</u></td></tr> <tr> <td>Sanmay Mukhopadhyay, Sr. Associate CIO</td><td>Date</td></tr> </table> <p>APPROVED:</p> <table> <tr> <td></td><td><u>10-3-13</u></td></tr> <tr> <td>Richard Sanchez, County Chief Information Office</td><td>Date</td></tr> </table>  |  | <u>10-3-13</u> | Sanmay Mukhopadhyay, Sr. Associate CIO | Date      |  | <u>10-3-13</u>              | Richard Sanchez, County Chief Information Office | Date      |   |                  |                               |           |                                     |                                      |
|   | <u>10-3-13</u>   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| Sanmay Mukhopadhyay, Sr. Associate CIO   | Date   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
|  | <u>10-3-13</u>   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |
| Richard Sanchez, County Chief Information Office                                     | Date   |   |                |  |           |  |                             |  |           |   |                  |                               |           |                                     |                                      |

Please contact the Office of the CIO (213.253.5600 or [info@cio.lacounty.gov](mailto:info@cio.lacounty.gov)) for questions concerning this CIO Analysis. This document is also available online at <http://ciolet.net.lacounty.gov/>



## Attachment B

### NETSCOUT SOLE SOURCE CHECKLIST

| Check<br>(✓)   | JUSTIFICATION FOR SOLE SOURCE CONTRACTS  |
|--|--|
|  | <i>Identify applicable justification and provide documentation for each checked item.</i>  |
|  | ➤ Only one bona fide source for the service exists; performance and price competition are not available.   |
|  | ➤ Quick action is required (emergency situation).  |
|  | ➤ Proposals were solicited but no satisfactory proposals were received.  |
|  | ➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.  |
| ✓  | ➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.<br><br>NetScout, as the original equipment manufacturer (OEM), is the only party authorized to maintain and support NetScout equipment. |
|  | ➤ It is more cost-effective to obtain services by exercising an option under an existing contract.   |
|  | ➤ It is in the best interest of the County, e.g., administrative cost savings, excessive learning curve for a new service provider, etc.   |
|  | ➤ Other reason. Please explain:  |
| <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;"> <br/>           Senior Assistant CEO         </div> <div style="text-align: center;"> <br/>           Date         </div> </div> |  |



**AGREEMENT  
BY AND BETWEEN  
COUNTY OF LOS ANGELES  
AND  
NETSCOUT SYSTEMS, INC.  
FOR  
PRODUCT MAINTENANCE AND SUPPORT SERVICES**

## TABLE OF CONTENTS

| PARAGRAPH       | TITLE  | PAGE     |
|-----------------|--|----------|
| <b>RECITALS</b> |  | <b>1</b> |
| <b>1.0</b>      | <b>APPLICABLE DOCUMENTS</b>  | <b>1</b> |
| <b>2.0</b>      | <b>DEFINITIONS</b>   | <b>2</b> |
| <b>3.0</b>      | <b>WORK</b>  | <b>3</b> |
| <b>4.0</b>      | <b>TERM OF AGREEMENT</b>   | <b>3</b> |
| <b>5.0</b>      | <b>AGREEMENT SUM, BILLING AND PAYMENT</b>  | <b>4</b> |
| <b>6.0</b>      | <b>ADMINISTRATION OF AGREEMENT – COUNTY</b>  | <b>6</b> |
| 6.1             | COUNTY’S PROJECT DIRECTOR  | 6        |
| 6.2             | COUNTY’S PROJECT MANAGER   | 6        |
| <b>7.0</b>      | <b>ADMINISTRATION OF AGREEMENT – CONTRACTOR</b>  | <b>7</b> |
| 7.1             | CONTRACTOR’S PROJECT MANAGER   | 7        |
| 7.2             | CONTRACTOR’S AUTHORIZED OFFICIAL(S)  | 7        |
| 7.3             | APPROVAL OF CONTRACTOR’S STAFF   | 7        |
| 7.4             | INTENTIONALLY OMITTED  | 7        |
| 7.5             | INTENTIONALLY OMITTED  | 7        |
| 7.6             | CONFIDENTIALITY AND DATA SECURITY  | 7        |
| <b>8.0</b>      | <b>STANDARD TERMS AND CONDITIONS</b>   | <b>8</b> |
| 8.1             | AMENDMENTS   | 8        |
| 8.2             | ASSIGNMENT AND DELEGATION  | 10       |
| 8.3             | AUTHORIZATION WARRANTY   | 10       |
| 8.4             | BUDGET REDUCTIONS  | 10       |
| 8.5             | CERTIFICATION REGARDING DEBARMENT, SUSPENSION,<br>INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER<br>COVERED TRANSACTIONS (45 C.F.R. PART 76) | 11       |
| 8.6             | INTENTIONALLY OMITTED  | 11       |
| 8.7             | COMPLIANCE WITH APPLICABLE LAWS, RULES AND<br>REGULATIONS  | 11       |

## TABLE OF CONTENTS

| PARAGRAPH | TITLE  | PAGE |
|-----------|--|------|
| 8.8       | COMPLIANCE WITH CIVIL RIGHTS LAWS- ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION LAWS.....          | 12   |
| 8.9       | COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM .....  | 14   |
| 8.10      | CONFLICT OF INTEREST .....   | 16   |
| 8.11      | CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST .....         | 16   |
| 8.12      | CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS.....                                      | 16   |
| 8.13      | CONTRACTOR RESPONSIBILITY AND DEBARMENT .....  | 17   |
| 8.14      | CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW .....     | 19   |
| 8.15      | INTENTIONALLY OMITTED.....   | 19   |
| 8.16      | CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM.....             | 19   |
| 8.17      | CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM ..... | 20   |
| 8.18      | COUNTY'S QUALITY ASSURANCE PLAN.....   | 20   |
| 8.19      | DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS .....  | 20   |
| 8.20      | EMPLOYMENT ELIGIBILITY VERIFICATION.....   | 21   |
| 8.21      | FACSIMILE REPRESENTATIONS.....   | 21   |
| 8.22      | FAIR LABOR STANDARDS .....   | 22   |
| 8.23      | FEDERAL ACCESS TO RECORDS.....   | 22   |
| 8.24      | FORCE MAJEURE .....  | 22   |
| 8.25      | GOVERNING LAW, JURISDICTION, AND VENUE .....   | 23   |
| 8.26      | INTENTIONALLY OMITTED.....   | 23   |
| 8.27      | INDEPENDENT CONTRACTOR STATUS.....   | 23   |
| 8.28      | INDEMNIFICATION .....  | 24   |
| 8.29      | GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE .....  | 24   |
| 8.30      | INSURANCE COVERAGE .....   | 28   |

## TABLE OF CONTENTS

| PARAGRAPH | TITLE   | PAGE |
|-----------|---|------|
| 8.31      | LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES.....   | 29   |
| 8.32      | INTENTIONALLY OMITTED.....  | 29   |
| 8.33      | INTENTIONALLY OMITTED.....  | 29   |
| 8.34      | NON EXCLUSIVITY.....  | 29   |
| 8.35      | NOTICE OF DELAYS .....  | 29   |
| 8.36      | NOTICE OF DISPUTES .....  | 30   |
| 8.37      | NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT .....  | 30   |
| 8.38      | NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW.....  | 30   |
| 8.39      | NOTICES.....  | 30   |
| 8.40      | PROHIBITION AGAINST INDUCEMENT OR PERSUASION .....  | 30   |
| 8.41      | PUBLIC RECORDS ACT.....   | 31   |
| 8.42      | PUBLICITY .....   | 31   |
| 8.43      | RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT .....  | 32   |
| 8.44      | RECYCLED BOND PAPER.....  | 33   |
| 8.45      | RESTRICTIONS ON LOBBYING .....  | 33   |
| 8.46      | SUBCONTRACTING .....  | 33   |
| 8.47      | TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM .....        | 35   |
| 8.48      | TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM..... | 35   |
| 8.49      | TERMINATION FOR CONVENIENCE .....   | 35   |
| 8.50      | TERMINATION FOR DEFAULT .....   | 36   |
| 8.51      | TERMINATION FOR IMPROPER CONSIDERATION.....   | 37   |
| 8.52      | TERMINATION FOR INSOLVENCY.....   | 38   |

## TABLE OF CONTENTS

| PARAGRAPH              | TITLE  | PAGE      |
|------------------------|--|-----------|
| 8.53                   | TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE ..... | 38        |
| 8.54                   | TERMINATION FOR NON-APPROPRIATION OF FUNDS.....                  | 38        |
| 8.55                   | UNLAWFUL SOLICITATION .....                                      | 39        |
| 8.56                   | VALIDITY .....   | 39        |
| 8.57                   | WAIVER.....  | 39        |
| 8.58                   | WARRANTY AGAINST CONTINGENT FEES.....                            | 39        |
| 8.59                   | WARRANTY OF SERVICE AND PERFORMANCE .....                        | 40        |
| <b>9.0</b>             | <b>UNIQUE TERMS AND CONDITIONS.....</b>                          | <b>40</b> |
| 9.1                    | NO INTENT TO CREATE A THIRD PARTY BENEFICIARY CONTRACT.....      | 40        |
| 9.2                    | INTENTIONALLY OMITTED.....                                       | 40        |
| 9.3                    | PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION.....          | 40        |
| <b>SIGNATURE</b> ..... |  | <b>42</b> |

## TABLE OF CONTENTS

### **STANDARD EXHIBITS**

- A STATEMENT OF WORK
- B PRICING SCHEDULE AND PRODUCT LIST
- C INTENTIONALLY OMITTED
- D CONTRACTOR'S EEO CERTIFICATION
- E COUNTY'S ADMINISTRATION
- F CONTRACTOR'S ADMINISTRATION
- G CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT
- H JURY SERVICE ORDINANCE
- I SAFELY SURRENDERED BABY LAW

**AGREEMENT BY AND BETWEEN  
COUNTY OF LOS ANGELES  
AND  
NETSCOUT SYSTEMS  
FOR  
PRODUCT MAINTENANCE AND SUPPORT SERVICES**

This Agreement and Exhibits made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the County of Los Angeles, hereinafter referred to as County and NetScout Systems, Inc. hereinafter referred to as Contractor. NetScout Systems, Inc. is located at 310 Littleton Road, Westford, MA 01886-4105

**RECITALS**

WHEREAS, the County may contract with private businesses for Product Maintenance and Support Services when certain requirements are met; and

WHEREAS, the Contractor is a private firm specializing in providing Product Maintenance and Support Services for network infrastructure; and

WHEREAS, Contractor has been monitoring and identifying telecommunication/network Infrastructure issues at DHS Facilities (Attachment A.2); and

WHEREAS, this Agreement is therefore authorized under California Code, Government Code Section 31000 which authorizes the Board of Supervisors to contract for maintenance and support services with persons specially trained and experienced to perform the services; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

**1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F, G, H, and I are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Agreement and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Agreement and then to the Exhibits according to the following priority.

**Standard Exhibits:**

**1.1 EXHIBIT A – Statement of Work**



- Attachment A.1 County Remote Access Policy
- Attachment A.2 County Facilities
- 1.2 EXHIBIT B – Pricing Schedule and Product List
- 1.3 EXHIBIT C – Intentionally Omitted
- 1.4 EXHIBIT D – Contractor’s EEO Certification
- 1.5 EXHIBIT E – County’s Administration
- 1.6 EXHIBIT F – Contractor’s Administration
- 1.7 EXHIBIT G – Contractor Acknowledgement and Confidentiality Agreement
- 1.8 EXHIBIT H – Jury Service Ordinance
- 1.9 EXHIBIT I – Safely Surrendered Baby Law

This Agreement and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous agreements, written and oral, and all communications between the parties relating to the subject matter of this Agreement. No change to this Agreement shall be valid unless prepared pursuant to Sub-Paragraph 8.1 – Amendments and signed by both parties.

## 2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 **Agreement:** This contract executed between County and Contractor. It sets forth the terms and conditions for the issuance and performance of Product Maintenance and Support Services as further described in Exhibit A – Statement of Work.
- 2.2 **Contractor:** A Delaware corporation that has entered into this Agreement with the County to perform or execute the work covered by the Statement of Work.
- 2.3 **Contractor Project Manager:** The individual designated by the Contractor to administer the Agreement operations after the Agreement award.
- 2.4 **County’s Project Director:** Person designated by County with authority for County on contractual or administrative matters relating to this Agreement that cannot be resolved by the County’s Project Manager.
- 2.5 **County’s Project Manager:** Person designated by County’s Project Director to manage the operations under this Agreement.
- 2.6 **Day(s):** Calendar day(s) unless otherwise specified.

- 2.7 DHS:** County of Los Angeles Department of Health Services
- 2.8 Director:** Director of Health Services or his authorized designee.
- 2.9 Product:** Means the Contractor hardware (“Hardware”) and software (“Software”) for which County is purchasing Product Maintenance and Support Services as identified in Exhibit B – Pricing Schedule and Product List
- 2.10 Facility:** Medical Centers, Rehabilitation Centers, Health Centers, or Ambulatory Care Centers all within Department of Health Services as identified in Attachment A.2 (County Facilities).
- 2.11 Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.
- 2.12 Maintenance, Maintenance Services, or Services:** Contractor shall provide Product Maintenance and Support Services as described in Exhibit A. For avoidance of doubt, the reference to “Maintenance” or “Maintenance Services” or “Product Maintenance and Support Services” or “Services” shall all mean the Product Maintenance and Support Services described in Exhibit A.

### **3.0 WORK**

- 3.1** The Contractor shall perform the Product Maintenance and Support Services in accordance with Exhibit A – Statement of Work and the terms of this Agreement subject to payment of Services. The Maintenance Services will be performed on the Products which were previously purchased or will be purchased by County pursuant to Contractor’s End User License Agreement accompanying the Products (“EULA”). For avoidance of doubt, the terms and conditions set forth in this Agreement pertain solely to the provision of Maintenance Services as described in Exhibit A and not to the Products which continue to be governed by and subject to the terms and conditions of the EULA.
- 3.2** In connection with its performance of the Services in this Agreement, if the Contractor provides any goods, services, or other work, other than as specified in this Agreement, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

### **4.0 TERM OF AGREEMENT**

- 4.1** The initial term of this Agreement shall be one (1) year commencing on November 13, 2013, unless sooner terminated or extended, in whole or in part, as provided in this Agreement. Notwithstanding the foregoing, the term of each Exhibit B will be as identified in Exhibit B.

- 4.2 The County shall have the sole option to extend the Agreement term for up to two (2) additional one-year periods for a maximum total Agreement term of three (3) years. Each option shall be exercised at the sole discretion of the Director or his designee as authorized by the Board of Supervisors.
- 4.3 The County maintains databases that track/monitor Contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.
- 4.4 The Contractor shall notify DHS when this Agreement is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to DHS at the address herein provided in Exhibit E – County's Administration.

## **5.0 AGREEMENT SUM, BILLING AND PAYMENT**

- 5.1 The Agreement Sum under this Agreement shall be the total amount payable by County to Contractor for supplying all Product Maintenance and Support Services provided hereunder as shown in Exhibits A through I. The total monetary amount shall be in accordance with Exhibit B – Pricing Schedule & Product List.
- 5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.
- 5.3 Intentionally Omitted

### **5.4 No Payment for Services Provided Following Expiration/ Termination of Agreement**

The Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Agreement. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Agreement.

## **5.5 Invoices and Payments**

- 5.5.1 The Contractor shall invoice the County 10 days after commencement date of the Agreement (November 13, 2013). In the event of an Amendment to add or remove Products to this Agreement, upon execution of such Amendment adding or removing Products to this Agreement, the Contractor shall invoice the County 10 days from commencement of Amendment. The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the County under the terms of this Agreement. The Contractor's pricing for Product Maintenance and Support Services shall be as provided in Exhibit B – Pricing Schedule and Product List. Contractor shall be paid only for the tasks, deliverables, goods, and services identified in Exhibit B.
- 5.5.2 The Contractor's invoices shall be priced in accordance with Exhibit B – Pricing Schedule and Product List
- 5.5.3 The Contractor's invoices shall contain the information set forth in Exhibit B – Pricing Schedule and Product describing the Services for which payment is claimed.
- 5.5.4 All invoices under this Agreement shall be submitted in two (2) copies to the County's Project Manager at the address provided in Exhibit E (County's Administration).

### **5.5.5 County Approval of Invoices**

All invoices submitted by the Contractor for payment must have the written approval of the County's Project Manager prior to any payment thereof. Payment of Contractor's invoice by the County shall mean that such written approval by the County's Project Manager has been given. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld.

## **5.6 Intentionally Omitted**

## **5.7 Maximum Obligation of County**

- 5.7.1 The annual maximum obligation of County for all services provided hereunder shall not exceed \$160,894, for the period November 13, 2013 to November 12, 2014.
- 5.7.2 During the term of this Agreement, the Director may amend Exhibit B – Pricing Schedule and Product List for additional equipment or unanticipated services and may increase the maximum obligation by no more than ten percent (10%) of the

annual maximum obligation. An updated Exhibit B for additional or removal of Product will be incorporated into this Agreement by an Amendment signed by both parties in accordance with paragraph 8.1 Amendments.

## **5.8 Electronic Download Certification**

The County acknowledges that, for each Agreement term as indicated in Paragraph 4.0, it may receive software updates, enhancements, corrections, releases, bug fixes, and modifications that Contractor may provide from time to time to all customers purchasing Maintenance (collectively, "Updates") and that such Updates may be available either via electronic download or pursuant to the delivery of a media kit. The County hereby certifies that to the extent Contractor makes an Update available via electronic download, it will only accept such Update via electronic download and that it will not request a media kit. Contractor shall not accept any request for media kit from County through this Agreement. Notwithstanding the foregoing, nothing herein guarantees that all Updates will be made available by Contractor via electronic download.

## **6.0 ADMINISTRATION OF AGREEMENT – COUNTY**

The Director shall have the authority to administer this Agreement on behalf of the County. Director retains professional and administrative responsibility for the services rendered under this Agreement. A listing of all County Administration referenced in the following Sub-Paragraphs is designated in Exhibit E – County's Administration. The County shall notify the Contractor in writing of any change in the names or addresses shown.

### **6.1 County's Project Director**

Responsibilities of the County's Project Director include:

- ensuring that the objectives of this Agreement are met; and
- providing direction to the Contractor in the areas relating to County policy, information requirements, and procedural requirements.

### **6.2 County's Project Manager**

The responsibilities of the County's Project Manager include:

- meeting with the Contractor's Project Manager on a regular basis; and
- inspecting any and all goods, services, or other work provided by or on behalf of the Contractor.

- overseeing the proper functioning of Contractor's Product. This individual will also act as the liaison between County and Contractor as necessary to promptly advise and assist in the resolution of all Product issues.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

## **7.0 ADMINISTRATION OF AGREEMENT – CONTRACTOR**

### **7.1 Contractor's Project Manager**

- 7.1.1 The Contractor's Project Manager will be Contractor's assigned sales account manager, as designated in Exhibit F – Contractor's Administration. The Contractor shall notify the County in writing of any change in the name or address of the Contractor's Project Manager.
- 7.1.2 The Contractor's Project Manager shall be responsible for managing the County account and this Agreement including but not limited to coordinating with County's Project Director and County's Project Manager as needed on a regular basis.

### **7.2 Contractor's Authorized Official(s)**

- 7.2.1 Contractor's Authorized Official(s) are designated in Exhibit F. Contractor shall promptly notify County in writing of any change in the name(s) or address(es) of Contractor's Authorized Official(s).
- 7.2.2 Contractor represents and warrants that all requirements of Contractor have been fulfilled to provide actual authority to such officials to execute documents under this Agreement on behalf of Contractor.

### **7.3 Approval of Contractor's Staff**

County has the absolute right to approve or disapprove of the Contractor's Project Manager.

### **7.4 Intentionally Omitted**

### **7.5 Intentionally Omitted**

### **7.6 Confidentiality and Data Security**

- 7.6.1 To the extent applicable, Contractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, County records and patient records, in

accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information as set forth in Exhibit G.

- 7.6.2 Contractor shall indemnify, defend, and hold harmless County, its Special Districts, elected and appointed officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, administrative penalties and fines assessed including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Sub-Paragraph 7.6, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Sub-Paragraph 7.6 shall be conducted by Contractor and performed by counsel selected by Contractor. Prior to retaining such counsel, Contractor shall notify County of its retention of said counsel. Notwithstanding the preceding sentence, County shall have the right to monitor any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense County shall provide Contractor with notice of such failure and provide Contractor with an opportunity to perform its indemnity obligation hereunder. If in the County's judgment Contractor continues to fail in providing County with a full and adequate defense, then County will be entitled to retain its own counsel, including, without limitation, County Counsel, and seek reimbursement from Contractor for reasonable costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.
- 7.6.3 Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality and indemnification provisions of this Agreement.
- 7.6.4 Contractor shall sign and adhere to the provisions of the "Contractor Acknowledgement and Confidentiality Agreement", Exhibit G.

## **8.0 STANDARD TERMS AND CONDITIONS**

### **8.1 AMENDMENTS**

- 8.1.1 For any change which affects the scope of work, term, Agreement Sum, payments, or any term or condition included under this Agreement, an Amendment shall be prepared by the County and then executed by the Contractor and by the Director or his designee. Notwithstanding the foregoing, in the event the Agreement is extended and/or additional Products are added for subsequent Product Maintenance and Support Services, the term of the Product Maintenance and Support Services for the extended and/or additional Products are to be coterminus with the term of this Agreement.
- 8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors, Chief Executive Officer or designee. Such additions and/or changes will not be binding on Contractor until an Amendment reflecting such additions and/or changes is executed by the Contractor and by the Director or his designee.
- 8.1.3 The Director or his designee may at his sole discretion, authorize extensions of time as defined in Paragraph 4.0 – Term of Agreement. To implement an extension of time, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his designee. The Contractor agrees that such extensions of time shall not change any other term or condition of this Agreement during the period of such extensions, unless otherwise set forth in the Amendment.
- 8.1.4 The Director or his designee may require, at his sole discretion, the addition and/or change of certain terms and conditions in the Agreement to conform to changes in federal or state law or regulation or County policy, during the term of this Agreement. The County reserves the unilateral right to add and/or change such provisions as required by law, regulation or County policy, without the need for Contractor's written consent, to preserve this Agreement's conformity and compliance to federal and state law or regulation or County policy as deemed necessary by the County's Board of Supervisors, County Counsel, the Chief Executive Officer or designee. Notwithstanding the foregoing, the County will provide Contractor with written notice of any such additions and/or changes to terms and conditions in this Agreement to conform to changes in federal or state law or regulations or County policy.



## **8.2 ASSIGNMENT AND DELEGATION**

- 8.2.1 The Contractor shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Sub-Paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.
- 8.2.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.
- 8.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

## **8.3 AUTHORIZATION WARRANTY**

The Contractor represents and warrants that the person executing this Agreement for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.

## **8.4 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its future payment obligation under this Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Agreement (including any extensions), and the future services to be provided by the Contractor under this Agreement shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, the Contractor shall continue to provide all of the services set forth in this Agreement.

**8.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (45 C.F.R. PART 76)**

Contractor hereby acknowledges that the County is prohibited from contracting with and making sub-awards to parties that are suspended, debarred, ineligible, or excluded or whose principals are suspended, debarred, ineligible, or excluded from securing federally funded contracts. By executing this Agreement, Contractor certifies that neither it nor any of its owners, officers, partners, or directors or other principals is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Further, by executing this Agreement, Contractor certifies that, to its knowledge, none of its subcontractors, at any tier, or any owner, officer, partner, director, or other principal of any subcontractor is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Contractor shall immediately notify County in writing, during the term of this Agreement, should it or any of its subcontractors or any principals of either be suspended, debarred, ineligible, or excluded from securing federally funded contracts. Failure of Contractor to comply with this provision shall constitute a material breach of this Agreement upon which the County may immediately terminate or suspend this Agreement.

**8.6 INTENTIONALLY OMITTED**

**8.7 COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS**

8.7.1 In the performance of this Agreement, Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, including, but not limited to standards of The Joint Commission, its National Patient Safety Goals, California Code of Regulations, Title 22, Division 5 regulations and all other applicable industry

best practices standards. All provisions required thereby to be included in this Agreement are incorporated herein by reference.

- 8.7.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, administrative penalties and fines assessed, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such applicable laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Sub-Paragraph 8.7 shall be conducted by Contractor and performed by counsel selected by Contractor. Prior to retaining such counsel, Contractor shall notify County of its retention of said counsel. Notwithstanding the preceding sentence, County shall have the right to monitor any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, County shall provide Contractor with notice of such failure and provide Contractor with an opportunity to perform its indemnity obligation hereunder. If in the County's judgment Contractor continues to fail in providing County with a full and adequate defense, then County will be entitled to retain its own counsel, including, without limitation, County Counsel, and seek reimbursement from Contractor for all reasonable costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

## **8.8 COMPLIANCE WITH CIVIL RIGHTS LAWS- ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION LAWS**

- 8.8.1 The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17); the Fair Employment & Housing Act, Government Code Section 12920-12922; and Affirmative Action in County Agreements, Chapter 4.32 of the Los Angeles County Code to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise

subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

- 8.8.2 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 8.8.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.8.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation.
- 8.8.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.
- 8.8.6 The Contractor shall provide County representatives with employment records for those Contractor employees who have been assigned to perform services for the County as necessary to verify Contractor's compliance with the provisions of this Sub-Paragraph 8.8 when so requested by the County.

- 8.8.7 If the County finds that any provisions of this Sub-Paragraph 8.8 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. While the County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Agreement.
- 8.8.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Agreement, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.
- 8.8.9 The Contractor shall certify to, and comply with, the provisions of Exhibit D – Contractor’s EEO Certification.

## **8.9 COMPLIANCE WITH THE COUNTY’S JURY SERVICE PROGRAM**

### **8.9.1 Jury Service Program:**

This Agreement is subject to the provisions of the County’s ordinance entitled Contractor Employee Jury Service (“Jury Service Program”) as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H (Jury Service Ordinance) and incorporated by reference into and made a part of this Agreement.

### **8.9.2 Written Employee Jury Service Policy**

1. Unless the Contractor has demonstrated to the County’s satisfaction either that the Contractor is not a “Contractor” as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee’s regular pay the fees received for jury service.

2. For purposes of this Sub-Paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any subcontractor to perform services for the County under the Agreement, the subcontractor shall also be subject to the provisions of this Sub-Paragraph. The provisions of this Sub-Paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the Agreement.
3. If the Contractor is not required to comply with the Jury Service Program when this Agreement commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Agreement and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this Sub-Paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Agreement and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

## **8.10 CONFLICT OF INTEREST**

8.10.1 No County employee whose position with the County enables such employee to influence the award or administration of this Agreement or any competing contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.10.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Sub-Paragraph shall be a material breach of this Agreement.

## **8.11 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Agreement.

## **8.12 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

8.12.1 Should the Contractor require additional or replacement personnel after the effective date of this Agreement, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. If the Contractor decides to pursue

consideration of GAIN/GROW participants for hiring, the Contractor shall provide information regarding job openings and job requirements to DPSS' GAIN/GROW staff at [GAINGROW@dpss.lacounty.gov](mailto:GAINGROW@dpss.lacounty.gov). The County will refer GAIN/GROW participants by job category to the Contractor.

- 8.12.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

## **8.13 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

### **8.13.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

### **8.13.2 Chapter 2.202 of the County Code**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

### **8.13.3 Non-responsible Contractor**

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.



#### **8.13.4 Contractor Hearing Board**

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or

termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **8.13.5 Subcontractors of Contractor**

These terms shall also apply to subcontractors of County Contractors.

#### **8.14 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law, Exhibit I (Safely Surrendered Baby Law). The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

#### **8.15 INTENTIONALLY OMITTED**

#### **8.16 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

- 8.16.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to

mitigate the economic burden otherwise imposed upon the County and its taxpayers.

- 8.16.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Agreement to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

#### **8.17 CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

- 8.17.1 Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.
- 8.17.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles Code Chapter 2.206.

#### **8.18 COUNTY'S QUALITY ASSURANCE PLAN**

The County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board and listed in the appropriate contractor performance database. The report to the Board will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Agreement or impose other penalties as specified in this Agreement.

#### **8.19 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

- 8.19.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.
- 8.19.2 If the Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the Contractor by cash payment upon demand.
- 8.19.3 County reserves the unilateral right to make any repairs which Director determines, in his sole discretion, to be a public safety issue requiring immediate repair. County will bill Contractor for the cost of said repair or deduct said cost from any outstanding amounts owed by County to Contractor.

## **8.20 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 8.20.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.
- 8.20.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

## **8.21 FACSIMILE REPRESENTATIONS**

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Sub-Paragraph 8.1, and received via communications

facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

## **8.22 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

## **8.23 FEDERAL ACCESS TO RECORDS**

If, and to the extent that, Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. Section 1395x(v)(1)(I)) is applicable, Contractor agrees that for a period of five (5) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Controller General of the United States, or to any of their authorized representatives, the Agreements, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

## **8.24 FORCE MAJEURE**

8.24.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Agreement, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this Sub-Paragraph as "force majeure events").

- 8.24.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this Sub-Paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.
- 8.24.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

## **8.25 GOVERNING LAW, JURISDICTION, AND VENUE**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

## **8.26 INTENTIONALLY OMITTED**

## **8.27 INDEPENDENT CONTRACTOR STATUS**

- 8.27.1 This Agreement is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- 8.27.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.
- 8.27.3 The Contractor understands and agrees that all persons

performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

8.27.4 The Contractor shall adhere to the provisions stated in Sub-Paragraph 7.6 – Confidentiality and Data Security.

## **8.28 INDEMNIFICATION**

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, agents and volunteers ("County Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to this Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

## **8.29 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sub-Paragraphs 8.29 and 8.30 of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other Contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

### **8.29.1 Evidence of Coverage and Notice to County**

- Certificate(s) of insurance coverage (Certificate) that meets County requirements satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing Services under this Agreement.
- Renewal Certificates shall be provided to County as soon as practicable, but no later than twenty (20) days following Contractor's policy expiration dates. The County reserves

the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.

- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles  
Department of Health Services  
Contracts and Grants Division  
313 N. Figueroa Street, 6E  
Los Angeles, CA 90012  
Attention: Kathy K. Hanks, C.P.M.  
Director, Contracts and Grants

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

#### **8.29.2 Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County



and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

#### **8.29.3 Cancellation of or Changes in Insurance**

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. Contractor shall provide written notice to County within thirty (30) days of cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of the County, upon which the County may suspend or terminate this Agreement.

#### **8.29.4 Failure to Maintain Insurance**

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.

#### **8.29.5 Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

#### **8.29.6 Contractor's Insurance Shall Be Primary**

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

#### **8.29.7 Waivers of Subrogation**

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

#### **8.29.8 Sub-Contractor Insurance Coverage Requirements**

Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

#### **8.29.9 Deductibles and Self-Insured Retentions (SIRs)**

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR.

#### **8.29.10 Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

#### **8.29.11 Application of Excess Liability Coverage**

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

#### **8.29.12 Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

#### **8.29.13 Alternative Risk Financing Programs**

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

#### **8.29.14 County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

### **8.30 INSURANCE COVERAGE**

**8.30.1 Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

|  |             |
|--|-------------|
| General Aggregate:                       | \$2 million |
| Products/Completed Operations Aggregate: | \$1 million |
| Personal and Advertising Injury:         | \$1 million |
| Each Occurrence:                         | \$1 million |

**8.30.2 Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**8.30.3 Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A)

naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

#### **8.30.4 Professional Liability/Errors and Omissions**

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

#### **8.31 LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES**

Contractor shall obtain and maintain in effect during the term of this Agreement, all valid licenses, permits, registrations, accreditations, and certificates required by law which are applicable to its performance of this Agreement, and shall ensure that all of its officers, employees, and agents who perform services hereunder obtain and maintain in effect during the term of this Agreement, all licenses, permits, registrations, accreditations, and certificates required by law which are applicable to their performance of services hereunder. All such licenses, permits, registrations, accreditations, and certifications relating to services hereunder shall be made available to County upon request.

#### **8.32 INTENTIONALLY OMITTED**

#### **8.33 INTENTIONALLY OMITTED**

#### **8.34 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Agreement shall not restrict the Department of Health Services from acquiring similar, equal or like goods and/or services from other entities or sources.

#### **8.35 NOTICE OF DELAYS**

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) business day or as soon as practical, give notice

thereof, including all relevant information with respect thereto, to the other party.

#### **8.36 NOTICE OF DISPUTES**

The Contractor shall bring to the attention of the County's Project Manager and/or County's Project Director any dispute between the County and the Contractor regarding the performance of services as stated in this Agreement. If the County's Project Manager or County's Project Director is not able to resolve the dispute, the Director or his designee shall resolve it.

#### **8.37 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

#### **8.38 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit I (Safely Surrendered Baby Law) of this Agreement and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

#### **8.39 NOTICES**

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits E – County's Administration and F – Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party.

#### **8.40 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party.

No bar exists against any hiring action initiated through a public announcement.

#### **8.41 PUBLIC RECORDS ACT**

8.41.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to Sub-Paragraph 8.43 – Record Retention and Inspection/Audit Settlement of this Agreement; as well as any documents that may have been submitted in response to a solicitation process for this Agreement, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.41.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

#### **8.42 PUBLICITY**

8.42.1 The Contractor shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Agreement within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Agreement, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the

prior written consent of the Director or his designee. The County shall not unreasonably withhold written consent.

- 8.42.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this Sub-Paragraph 8.42 shall apply.

#### **8.43 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

- 8.43.1 The Contractor shall maintain, and provide upon request by County, accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.
- 8.43.2 The Contractor agrees that the County or its authorized representatives, shall have the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to the purchase of Product Maintenance and Support Services under this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time.
- 8.43.3 In the event that an audit of the Contractor is conducted specifically regarding this Agreement by any Federal or State auditor, including audits conducted by the Medicare and Medi-Cal programs, or both, then the Contractor shall file a copy of each such audit report, including Statement of Auditing Standards No. 70 Type 2 Reports, with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.43.4 Failure on the part of the Contractor to comply with any of the provisions of this Sub-Paragraph 8.43 shall constitute a material

breach of this Agreement upon which the County may terminate or suspend this Agreement.

- 8.43.5 If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of the County conduct an audit of the Contractor regarding the work performed under this Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Agreement or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by the County for the purpose of this Agreement.

#### **8.44 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Agreement.

#### **8.45 RESTRICTIONS ON LOBBYING**

If any Federal funds are to be used to pay for Contractor's services under this Agreement, Contractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Agreement also fully complies with all such certification and disclosure requirements.

#### **8.46 SUBCONTRACTING**

- 8.46.1 The requirements of this Agreement may not be subcontracted by the Contractor **without the advance written approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Agreement. For clarification purposes, use of third party components and third party technicians to augment Contractor's staff does not constitute subcontracting for purposes of this Section 8.46 and are therefore not subject to the terms of this Section 8.46.



- 8.46.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:
- A description of the work to be performed by the subcontractor;
  - A draft copy of the proposed subcontract; and
  - Other pertinent information and/or certifications requested by the County.
- 8.46.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.
- 8.46.4 The Contractor shall remain fully responsible for all performances required of it under this Agreement, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 8.46.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The Contractor is responsible to notify its subcontractors of this County right.
- 8.46.6 The Director or his designee is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 8.46.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 8.46.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles  
Department of Health Services  
Contracts and Grants Division  
313 N. Figueroa Street – 6E

Los Angeles, CA 90012  
Attention: Kathy K. Hanks, C.P.M.  
Director, Contracts and Grants

before any subcontractor employee may perform any work hereunder.

**8.47 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in Sub-Paragraph 8.16 – Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Agreement. Without limiting the rights and remedies available to the County under any other provision of this Agreement, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Agreement pursuant to Sub-Paragraph 8.50 – Termination for Default and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

**8.48 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Sub-Paragraph 8.17 – Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

**8.49 TERMINATION FOR CONVENIENCE**

8.49.1 This Agreement may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than thirty (30) days after the notice is sent. Termination for convenience shall not result in a refund of any prepaid fees for unused portion of the Product Maintenance and Support Services.

8.49.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Agreement on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.49.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Agreement shall be maintained by the Contractor in accordance with Sub-Paragraph 8.43, Record Retention and Inspection/Audit Settlement.

## **8.50 TERMINATION FOR DEFAULT**

8.50.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Agreement, if, in the judgment of the Director or his designee.

- Contractor has materially breached this Agreement; or
- Contractor fails to timely provide and/or perform any task, deliverable, service, or other work required either under this Agreement; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.50.2 In the event that the County terminates this Agreement in whole or in part as provided in Sub-Paragraph 8.50.1, the County shall be entitled to a refund of any prepaid fees for unused part of the Product Maintenance and Support Services.

8.50.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in Sub-Paragraph 8.50.2 if its failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or Contractual capacity, acts of Federal or State governments in their sovereign capacities,

fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this Sub-Paragraph, the term "subcontractor(s)" means subcontractor(s) at any tier.

- 8.50.4 If, after the County has given notice of termination under the provisions of this Sub-Paragraph 8.50, it is determined by the County that the Contractor was not in default under the provisions of this Sub-Paragraph 8.50, or that the default was excusable under the provisions of Sub-Paragraph 8.50.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Sub-Paragraph 8.49 – Termination for Convenience.
- 8.50.5 The rights and remedies of the County provided in this Sub-Paragraph 8.50 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **8.51 TERMINATION FOR IMPROPER CONSIDERATION**

- 8.51.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.
- 8.51.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with

the supervision of the employee or to the County Fraud Hotline at (800) 544-6861 or [www.lacountyfraud.org](http://www.lacountyfraud.org).

- 8.51.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

## **8.52 TERMINATION FOR INSOLVENCY**

- 8.52.1 The County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

- 8.52.2 The rights and remedies of the County provided in this Sub-Paragraph 8.52 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **8.53 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which the County may in its sole discretion, immediately terminate or suspend this Agreement.

## **8.54 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Agreement, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Agreement during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Agreement in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

#### **8.55 UNLAWFUL SOLICITATION**

Contractor shall inform all of its officers and employees performing services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with section 6150) of Business and Professions Code of the State of California (i.e. State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of said provisions by its officers and employees. Contractor shall utilize the attorney referral service of all those bar associations within Los Angeles County that have such a service.

#### **8.56 VALIDITY**

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **8.57 WAIVER**

No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Sub-Paragraph 8.57 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **8.58 WARRANTY AGAINST CONTINGENT FEES**

8.58.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.58.2 For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **8.59 WARRANTY OF SERVICE AND PERFORMANCE**

For the Product Maintenance and Support Services set forth in Exhibit A (Statement of Work), Contractor warrants that the Product Maintenance and Support Services will be performed in a timely and workmanlike manner using only qualified and trained maintenance technicians totally familiar with the Product and its maintenance requirements.

To the extent applicable, Contractor warrants that its technicians performing Services under this Agreement will be certified by factory trainers on not less than an annual basis.

## **9.0 UNIQUE TERMS AND CONDITIONS**

### **9.1 NO INTENT TO CREATE A THIRD PARTY BENEFICIARY CONTRACT**

Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person shall acquire any rights as a third party beneficiary of this Agreement.

### **9.2 INTENTIONALLY OMITTED**

### **9.3 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

9.3.1 The Contractor shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from Contractor's performance of the Services as described in this Agreement. County shall inform the Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and Contractor shall have sole control of the defense and settlement thereof.

9.3.2 In the event the Services become the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure pursuant to Section 9.3.1, such that County's continued ability to receive the Service is formally restrained, enjoined, or subjected to a risk of damages, the Contractor, at its sole expense, shall either:

Obtain for County a license to continue receiving the Services; or

Modify the Services so that it is noninfringing.

- 9.3.3 The Contractor shall have no liability if the alleged infringement or unauthorized disclosure is based upon; (i) use of any non-Contractor services, information, design, specification, instruction, software, data, or material in combination with the Services where such infringement would not have arisen but for such combination; (ii) the infringement is caused by the modification of the Services by a party other than Contractor where such infringement would not have arisen but for such modification; or (iii) the infringement is caused by the use of other than the current version of a Services, if the current version would be noninfringing and had been offered by Contractor to Count.



IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be executed by the County's Director of Health Services and Contractor has caused this Agreement to be executed in its behalf by its duly authorized officer, the day, month, and year first above written.

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Mitchell H. Katz, M.D.  
Director of Health Services

CONTRACTOR

\_\_\_\_\_  
NetScout Systems, Inc.

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

APPROVED AS TO FORM  
BY THE OFFICE OF THE  
COUNTY COUNSEL

By \_\_\_\_\_  
Deputy County Counsel

# STATEMENT OF WORK

## 1. SCOPE OF WORK

Department of Health Services ("Customer") is the licensee of certain NetScout software products, including firmware ("Software") and/or is the owner of certain NetScout hardware products ("Hardware" and together with Software collectively referred to as "Product") that have been purchased from NetScout or an authorized NetScout reseller. The Software and Hardware are subject to the terms under which the Software and Hardware were originally purchased ("Agreement"). This Statement of Work (hereafter the "Maintenance Description") states the terms under which NetScout will deliver the MasterCare technical support services for such Products ("Maintenance") upon Customer's purchase of the same. In the event of a conflict between the terms of the Agreement and this Maintenance Description, the terms this Maintenance Description will govern.

## 2. MASTERCARE SUPPORT

2.1. General. Subject to the terms herein, MasterCare Support services includes:

- 24x7 access to technical support engineers;
- one hour priority response on severity 1 technical support calls;
- maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to NetScout customers generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as "Updates") for covered Products;
- access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes;
- advanced replacement or onsite repair of Hardware during the term set forth in Exhibit B;
- 24x7 access to self-help on the MasterCare portal for technical answers;
- knowledge transfer through NetScout's online learning center;
- electronic MasterCare newsletter;
- discount on unlimited registrations to NetScout's user forum conference; and
- registered access to the MasterCare portal

Live technical telephone support is provided 24x7 for Severity 1 issues received by telephone and non-Severity 1 issues received by telephone during Normal Business Hours. All non-severity 1 issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all

other regions. Unless otherwise agreed to in writing by NetScout, Product is eligible for Maintenance support services during the term set forth in Exhibit B. In the event Product is moved from one Customer location to another, Customer will provide NetScout with notice of the new location; failure to notify NetScout of such Product relocation may result in Maintenance disruption or delay. Customer may purchase Supplemental Maintenance Offerings for an additional fee.

## 2.2. Hardware Support

NetScout will provide advanced replacement or on-site repair of the Hardware during the term identified in Exhibit B. Onsite repair may be provided by a third party and subject to parts availability and geographical restrictions. Same day service is not available in all areas. Service timing is dependent upon the time of day that NetScout initiates a call to the third party providing the onsite repair, which is dependent upon the time of day that NetScout receives customer's call.

2.3. Service Level Guidelines. NetScout's severity levels and response times for MasterCare are as follows.

|                   | Description  | MasterCare  |
|-------------------|--|---|
| <b>Severity 1</b> | NetScout product is completely down with no workaround   | <ul style="list-style-type: none"> <li>• 1 hour or less*</li> <li>• Daily follow up</li> </ul>        |
| <b>Severity 2</b> | Functional outage with no workaround   | <ul style="list-style-type: none"> <li>• 1 hour or less**</li> <li>• Follow up 2x per week</li> </ul> |
| <b>Severity 3</b> | Functional or system outage with acceptable workaround   | <ul style="list-style-type: none"> <li>• 1 hour or less**</li> <li>• Follow up as required</li> </ul> |
| <b>Severity 4</b> | Minor problem such as cosmetic or simple workaround; product question or general information request | <ul style="list-style-type: none"> <li>• 1 hour or less**</li> <li>• Follow up as required</li> </ul> |
| <b>Severity 5</b> | Enhancement request  | <ul style="list-style-type: none"> <li>• 5 business days</li> <li>• Follow up as required</li> </ul>  |

\*After NetScout normal business hours available only via phone

\*\* During NetScout normal business hours

2.4 Escalation process. NetScout will process incidents as follows:

| MasterCare Escalation Process | Primary Support | Second Level Support | Product Specialists | Engineering      |
|-------------------------------|-----------------|----------------------|---------------------|------------------|
| <b>Severity 1</b>             | Immediate       | Immediate            | 1 Day               | Until Resolution |
| <b>Severity 2</b>             | 5 Days          | 5 Days               | 10 Days             | Until Resolution |
| <b>Severity 3</b>             | 5 Days          | Until Resolution     |                     |                  |

|                   |         |                  |  |  |
|-------------------|---------|------------------|--|--|
| <b>Severity 4</b> | 10 Days | Until Resolution |  |  |
|-------------------|---------|------------------|--|--|

- All Severity 1 incidents are worked continuously until resolved.
- Escalation time is measured as time waiting for NetScout – this excludes time on hold per the customer (vacation, scheduling, etc.).
- Severity 3 and 4 incidents that are found to be bugs will be logged with Engineering and the ticket will be closed as 'reviewed for future release'.

### **3. REPAIRS**

A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide MasterCare with respect to such Products. Prior to returning defective Products to NetScout for repair or replacement, customer must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, customer is responsible for backing up customer's data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of customer's confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

### **4. CONTINUING AVAILABILITY**

If NetScout discontinues a Product, NetScout will continue to make MasterCare Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release. NetScout reserves the right to change or discontinue Maintenance offerings without notice, subject to the terms of this Maintenance Description and provided Maintenance does not change for the remainder of the then-current Maintenance term.

### **5. SUBSTITUTIONS; SOFTWARE UPDATES; LIMITATIONS**

NetScout reserves the right to substitute functionally compatible products not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product. NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If customer has a party

other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of customer or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare and are separately chargeable at the then-current list price.

## **6. CUSTOMER OBLIGATIONS**

Customer will grant the NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare Support.

## COUNTY REMOTE ACCESS POLITY

This Attachment A.1 (County Remote Access Policy) sets forth the policies and procedures for Contractor's remote access to County's network.

### 1. PURPOSE

The purpose of this policy is to define standards for connecting to any DHS network from any host. These standards are designed to minimize the potential exposure to DHS from damages that may result from unauthorized use of a vendor's resources. Damages include the loss of sensitive or company confidential data, intellectual property, damage to public image, or damage to critical DHS internal systems.

### 2. POLICY

The computer systems, networks and data repositories of County's Department of Health Services' networks are critical resources and must be protected against unauthorized and/or malicious access. Authorized users of DHS computer systems, networks and data repositories may be permitted to remotely connect to those systems, networks and data repositories for the conduct of DHS-related business only through secure, authenticated and carefully managed access methods.

It is the responsibility of County approved vendors and their employees, contractors and agents with remote access privileges to any DHS networks to ensure that their remote access connection to any of our applications is given the same consideration as the user's on-site connection.

Secure remote access must be strictly controlled. Control will be enforced via RSA™ one-time password tokens that will be assigned accordingly. At no time should any outside vendor provide their token, login or password to anyone.

County approved vendors and their employees, contractors and agents with remote access privileges must ensure at their vendor-owned personal computer or workstation, which is remotely connected to any DPSS network, is not connected to any other network at the same time.

All remote vendor or business partner connections to the DHS network must be secured with industry standard encryption (e.g., SSL, SSH, IPSEC, etc.) and authentication mechanisms. Connections should be restricted by IP address and service (port). Back-end systems that are accessed through remote connections must be properly secured (locked down to the extent possible) to ensure other portions of the DHS network cannot be accessed from those devices.

The remote connections and related activities must be auditable and reviewed for appropriateness on a regular basis by the responsible DHS system administrator(s). Remote connection audit logs must be retained for at least one year.

All hosts, including personal computers, connected to any DHS internal networks via remote access technologies must use the most up-to-date anti-virus/anti-spyware software as determined by DHS Information Technologies (DHS/IT).

Personal equipment used to connect to any DHS network must meet all DHS remote access requirements.

Cross References: Board of Supervisors Policy 6.101, Use of County Information and Technology Resources.

## COUNTY FACILITIES

Department of Health Services Locations where NetScout is equipment is implemented

**Health Services Administration**

313 N. Figueroa Street  
Los Angeles, CA 90012

**Harbor-UCLA Medical Center**

1000 W. Carson Street  
Torrance, CA 90509

**LAC+USC Medical Center**

1200 N. State Street  
Los Angeles, CA 90033

**Olive View-UCLA Medical Center**

14445 Olive View Drive  
Sylmar, CA 91342

**RANCHO LOS AMIGOS**

Rancho Los Amigos National Rehabilitation Center Pharmacy  
7601 E Imperial Hwy  
Downey, CA 90242

**High Desert Multi-Service Ambulatory Care Center (HD-MACC)**

HD-MACC  
44900 N. 60<sup>th</sup> Street W  
Lancaster, CA 93536

**Martin Luther King, Jr. Multi-Service Ambulatory Care Center (MLK-MACC)**

MLK-MACC  
12021 S. Wilmington Ave.  
Los Angeles, CA 90059

**Internal Services Department**

Information Technology Service, Downey Data Center  
9150 E. Imperial Hwy  
Downey, CA 90242

**Alhambra**

1000 S. Fremont Ave.  
Alhambra, CA 91803

**Ferguson**

5555 Ferguson Dr.  
Commerce, CA 90022

**And any other County and County Support Facilities.**



**NetScout Systems, Inc.**  
**MasterCare**  
**Pricing Schedule and Product List**  
Effective November 13, 2013 through November 12, 2014

| Product Number | Product Description | Qty | Serial Number | Start Date | End Date | # of Days | Annual List Price | Discount | Net Price |
|----------------|---------------------|-----|---------------|------------|----------|-----------|-------------------|----------|-----------|
|----------------|---------------------|-----|---------------|------------|----------|-----------|-------------------|----------|-----------|

## Appliance Aftercare

|                               |   |   |         |            |            |     |               |       |        |
|-------------------------------|---|---|---------|------------|------------|-----|---------------|-------|--------|
| 5508L                         | nGenius Performance Manager Standalone Serve  | 1 | 2Q3DJS1 | 11/13/2013 | 11/12/2014 | 365 | \$0.00        | 0.00% | \$0.00 |
| 5508L-R-SP                    | nGenius Performance Manager Appliance – Hardw | 1 | 2Q3BJS1 | 11/13/2013 | 11/12/2014 | 365 | \$0.00        | 0.00% | \$0.00 |
| <b>Subtotal for APPLIANCE</b> |   |   |         |            |            |     | <b>\$0.00</b> |       |        |

## Hardware Aftercare

|             |   |   |              |            |            |     |             |        |             |
|-------------|---|---|--------------|------------|------------|-----|-------------|--------|-------------|
| 6916/LS     | nGenius InfiniStream, 4-Port 10/100/1000Base- | 1 | NSO110696020 | 11/13/2013 | 11/12/2014 | 365 | \$6,440.00  | 15.00% | \$5,474.00  |
| 6916A/TS    | nGenius InfiniStream, 4-Port 10/100/1000Base- | 1 | 38HQTk1A     | 11/13/2013 | 11/12/2014 | 365 | \$4,900.00  | 15.00% | \$4,165.00  |
| 6916A/TS    | nGenius InfiniStream, 4-Port 10/100/1000Base- | 1 | 45RHRG1      | 11/13/2013 | 11/12/2014 | 365 | \$4,900.00  | 15.00% | \$4,165.00  |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP114053   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP115646   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP116665   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP116695   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP117010   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP117011   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP117012   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6986/HS-AR1 | nGenius InfiniStream, 8-Port 10/100/1000Base- | 1 | ATSP117013   | 11/13/2013 | 11/12/2014 | 365 | \$12,810.00 | 15.00% | \$10,888.50 |
| 6995/HS-AR1 | nGenius InfiniStream, 4-Port 10 Gigabit Confi | 1 | ATSP116696   | 11/13/2013 | 11/12/2014 | 365 | \$21,420.00 | 15.00% | \$18,207.00 |

**EXHIBIT B**

| Product Number               | Product Description                           | Qty | Serial Number | Start Date | End Date   | # of Days | Annual List Price   | Discount | Net Price  |
|------------------------------|---|-----|---------------|------------|------------|-----------|---------------------|----------|------------|
| 9241/HD                      | Probe, 4-Port 10/100Base-T Fast Enet,HC, w/n  | 1   | 2011039233    | 11/13/2013 | 11/12/2014 | 365       | \$2,939.00          | 15.00%   | \$2,498.15 |
| 9901/1G                      | Probe, 2-Port 1000 Base-LX Gigabit Ethernet - | 1   | 2003060615    | 11/13/2013 | 11/12/2014 | 365       | \$4,479.00          | 15.00%   | \$3,807.15 |
| RK17E1121                    | Sniffer InfiniStream - i1700 - 8 Port Etherne | 1   | 95V0CC1       | 11/13/2013 | 3/31/2014  | 139       | \$2,970.00          | 15.00%   | \$961.38   |
| RK17E1121                    | Sniffer InfiniStream - i1700 - 8 Port Etherne | 1   | B5V0CC1       | 11/13/2013 | 3/31/2014  | 139       | \$2,970.00          | 15.00%   | \$961.38   |
| RK17F1121                    | Sniffer InfiniStream - i1700 - 4 Port Gig SFP | 1   | 4T22BC1       | 11/13/2013 | 3/31/2014  | 139       | \$4,005.00          | 15.00%   | \$1,296.41 |
| SK17EL                       | Infinistream K17E SW License                  | 1   |               | 11/13/2013 | 3/31/2014  | 139       | \$6,660.00          | 15.00%   | \$2,155.83 |
| SK17EL                       | Infinistream K17E SW License                  | 1   |               | 11/13/2013 | 3/31/2014  | 139       | \$6,660.00          | 15.00%   | \$2,155.83 |
| SK17FL                       | Infinistream K17F SW License                  | 1   |               | 11/13/2013 | 3/31/2014  | 139       | \$8,190.00          | 15.00%   | \$2,651.09 |
| <b>Subtotal for HARDWARE</b> |   |     |               |            |            |           | <b>\$135,606.22</b> |          |            |

|                              |                                  |   |            |            |            |     |                    |        |             |
|------------------------------|----------------------------------|---|------------|------------|------------|-----|--------------------|--------|-------------|
| Software Aftercare           |                                  |   |            |            |            |     |                    |        |             |
| 9500L-LO                     | Kit, PM Linux, Coupon Kit        | 1 | 4000074415 | 11/13/2013 | 11/12/2014 | 365 | \$8,500.00         | 15.00% | \$7,225.00  |
| 9500L-LO                     | Kit, PM Linux, Coupon Kit        | 1 | 4000076332 | 11/13/2013 | 11/12/2014 | 365 | \$8,500.00         | 15.00% | \$7,225.00  |
| 9502-ENT                     | nGenius Service Delivery Manager | 1 | 4000075706 | 11/13/2013 | 11/12/2014 | 365 | \$12,750.00        | 15.00% | \$10,837.50 |
| <b>Subtotal for SOFTWARE</b> |                                  |   |            |            |            |     | <b>\$25,287.50</b> |        |             |

|                               |  |  |  |  |  |  |                     |  |  |
|-------------------------------|--|--|--|--|--|--|---------------------|--|--|
| <b>TOTAL MAINTENANCE COST</b> |  |  |  |  |  |  | <b>\$160,893.72</b> |  |  |
|-------------------------------|--|--|--|--|--|--|---------------------|--|--|

**CONTRACTOR'S EEO CERTIFICATION**

---

Contractor Name

---

Address

---

Internal Revenue Service Employer Identification Number**GENERAL CERTIFICATION**

In accordance with Section 4.32.010 of the Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

**CONTRACTOR'S SPECIFIC CERTIFICATIONS**

- |    |   |                              |                             |
|----|---|------------------------------|-----------------------------|
| 1. | The Contractor has a written policy statement prohibiting discrimination in all phases of employment.   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. | The Contractor periodically conducts a self analysis or utilization analysis of its work force.   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. | The Contractor has a system for determining if its employment practices are discriminatory against protected groups.  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. | Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

---

Authorized Official's Printed Name and Title

---

Authorized Official's Signature

---

Date

## COUNTY'S ADMINISTRATION

### COUNTY PROJECT DIRECTOR:

Name: ENRIQUE GARCIA

Title: CHIEF TECHNOLOGY OFFICER

Address: 313 N. FIGUEROA STREET, ROOM 317A

LOS ANGELES, CA 90012

Telephone: (213) 240-8082 Facsimile: (213) 240-7809

E-Mail Address: enriquegarcia@dhs.lacounty.gov

### COUNTY PROJECT MANAGER:

Name: Oscar Orozco

Title: Manager, Network Operations

Address: 5555 Ferguson Drive

Commerce, CA 90022

Telephone: (323) 869-7105 Facsimile: (323) 890-8544

E-Mail Address: oorozco@dhs.lacounty.gov

**CONTRACTOR'S ADMINISTRATION****CONTRACTOR'S NAME:** \_\_\_\_\_**CONTRACT NO:** \_\_\_\_\_**CONTRACTOR'S PROJECT MANAGER:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**CONTRACTOR'S AUTHORIZED OFFICIAL(S)**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**Notices to Contractor shall be sent to the following:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT**

CONTRACTOR NAME \_\_\_\_\_ Agreement  
No. \_\_\_\_\_

**GENERAL INFORMATION:**

The Contractor referenced above has entered into an Agreement with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

**CONTRACTOR ACKNOWLEDGEMENT:**

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced Agreement.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced Agreement. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

**CONFIDENTIALITY AGREEMENT:**

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractor's Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced Agreement between Contractor and the County of Los Angeles.

Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced Agreement. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PRINTED NAME:

\_\_\_\_\_

POSITION:

\_\_\_\_\_

## CONTRACTOR EMPLOYEE JURY SERVICE

### 2.203.010 Findings.

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

### 2.203.020 Definitions.

The following definitions shall be applicable to this chapter:

- A. "Contractor" means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.
- C. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:
  - 1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or
  - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or
  - 3. A purchase made through a state or federal contract; or
  - 4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant



to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or

5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or
  6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or
  7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or
  8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.
- D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if:
1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or
  2. The contractor has a long-standing practice that defines the lesser number of hours as full time.
- E. "County" means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002: Ord. 2002-0015 § 1 (part), 2002)

### **2.203.030 Applicability.**

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002: Ord. 2002-0015 § 1 (part), 2002)

### **2.203.040 Contractor Jury Service Policy.**

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the

employees' regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.050 Other Provisions.**

- A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.
- B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.060 Enforcement and Remedies.**

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

- 1. Recommend to the board of supervisors the termination of the contract; and/or,
- 2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.070 Exceptions.**

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
- B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
  - 1. Has ten or fewer employees during the contract period; and,
  - 2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
  - 3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

“Dominant in its field of operation” means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

“Affiliate or subsidiary of a business dominant in its field of operation” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.090 Severability.**

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

# *Safely* Surrendered



No shame. No blame. No names.

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafela.org](http://www.babysafela.org)



# *Safely* Surrendered Baby Law

## What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

## How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

## What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

## Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

## Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

## Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

## What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

## What happens to the parent or surrendering adult?

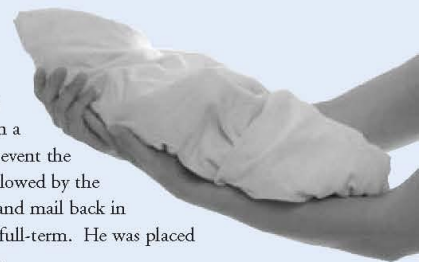
Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

## Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

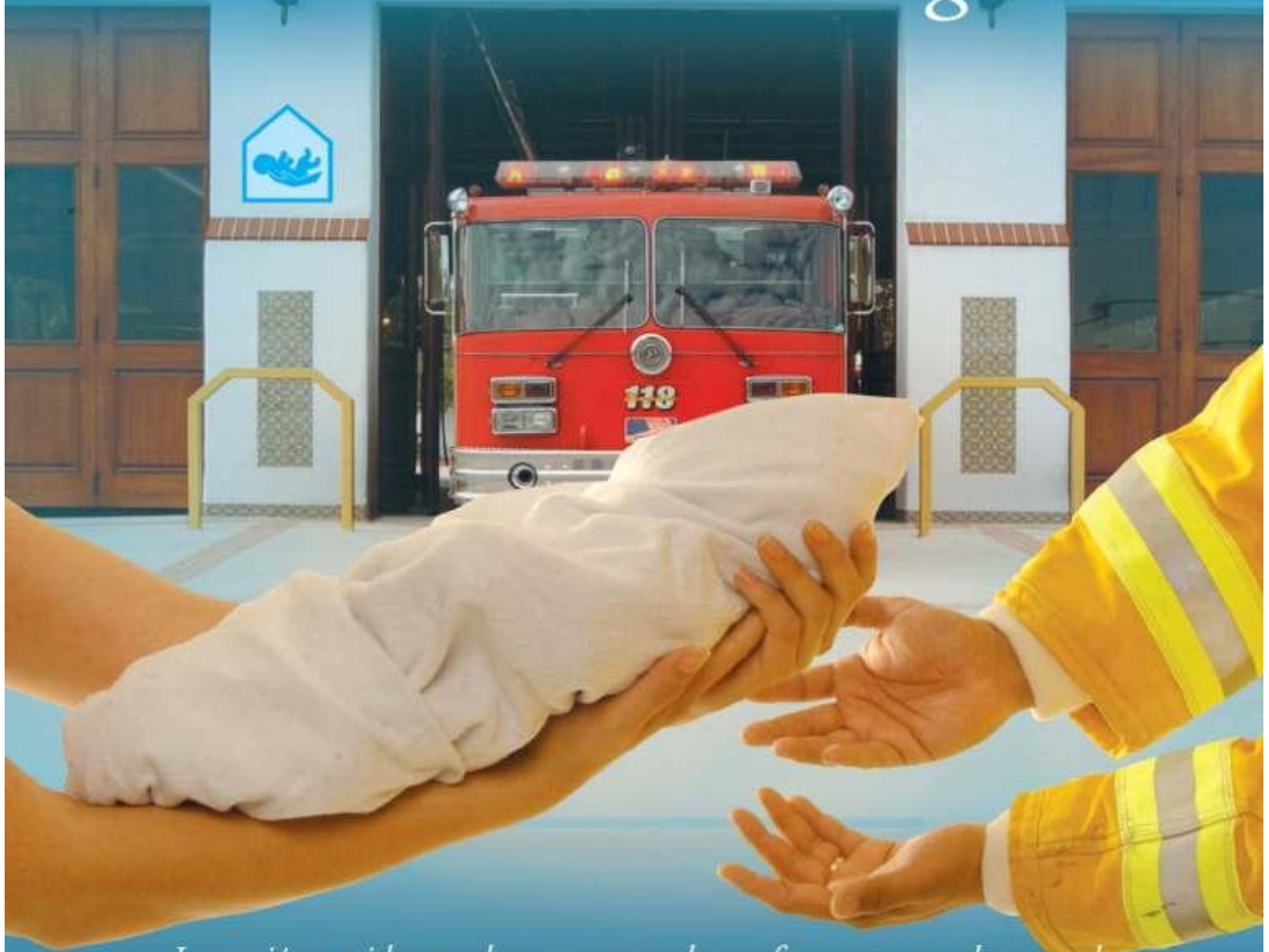
## *A baby's story*

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.





# *Ley de* Entrega de Bebés *Sin Peligro*



*Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles*

Sin pena. Sin culpa. Sin nombres.

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafela.org](http://www.babysafela.org)



# Ley de Entrega de Bebés Sin Peligro

## ¿Qué es la Ley de Entrega de Bebés sin Peligro?

La Ley de Entrega de Bebés sin Peligro de California permite la entrega confidencial de un recién nacido por parte de sus padres u otras personas con custodia legal, es decir cualquier persona a quien los padres le hayan dado permiso. Siempre que el bebé tenga tres días (72 horas) de vida o menos, y no haya sufrido abuso ni negligencia, pueden entregar al recién nacido sin temor de ser arrestados o procesados.

*Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.*

## ¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalete y el padre/madre o el adulto que lo entregue recibirá un brazalete igual.

## ¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Ángeles al 1-800-540-4000.

## ¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan si tienen custodia legal.

## ¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

## ¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

## ¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

## ¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

## ¿Por qué se está haciendo esto en California? ?

La finalidad de la Ley de Entrega de Bebés sin Peligro es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La Ley de Entrega de Bebés sin Peligro impide que vuelva a suceder esta tragedia en California.

## Historia de un bebé

A la mañana temprano del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dio a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazalete con un número que coincidía con la pulsera del bebé; esto serviría como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del período de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.

